IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

(1) D.B. CIVIL REVIEW PETITION NO. 103/2004
IN
D.B. CIVIL SPECIAL APPEAL NO. 724/1998
G.P. AGRAWAL & ORS. Vs. RAJASTHAN HOUSING BOARD & ANR.
And
(2) D.B. CIVIL REVIEW PETITION NO. 104/2004
IN
D.B. CIVIL SPECIAL APPEAL NO. 746/1998
G.P. AGRAWAL & ORS. Vs. RAJASTHAN HOUSING BOARD & ORS.

DATE: 11/12/2007.

HON'BLE MR. JUSTICE K.S. RATHORE
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. B.L. Sharma, Sr. Advocate with
Ms. Raj Sharma for the petitioners.
Mr. Shyam Arya, Govt. Advocate for the State.
Mr. G.K. Garg with
Ms. Anita Agarwal for the respondents.

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R E P O R T A B L E

BY THE COURT: (PER HON'BLE MR. RATHORE,J.)

Since these two review petitions are involving similar question of law, therefore, they are being decided by this common order.

2. Brief facts of the case are that the petitioners are B.E. and were initially appointed as Project Engineers (Junior) by the Rajasthan Housing

Board against the substantive posts in the year 1989 and their services are being regulated by the Rajasthan Housing Board Employees (Conditions of Recruitment and Promotion) Regulations, 1976 (for short 'the Regulations of 1976'). The post of Project Engineer (Senior) is to be filled 50% by direct recruitment and 50% by promotion. The promotion quota was further bifurcated into 25% to be filled from Diploma holders and 25% to be filled from Degree holders. The Board vide its resolution No. 137.20 dated 09.12.1987 amended the said ratio of promotion quota to 30% to be filled from Diploma holders and 20% to be filled from Degree holders and this amendment was approved by the State Government vide its order dated 25.02.2000.

3. It is alleged that since 1987 no DPC was held for promotion on the post of Project Engineer (Senior) and adhoc promotions were made from time to time and vide order dated 15.03.95, 54 Project Engineers (Junior) were promoted on the post of Project Engineer (Senior) for a period of one year or till the holding of meeting of DPC, whichever is earlier. The petitioners were also promoted on the post of Project Engineer (Senior). The Commissioner, Rajasthan Housing Board has issued a notice dated 19.12.2002 stating therein as to why adhoc

promotions given to the petitioners be not cancelled and they be reverted. The notices were issued to the petitioners pursuant to the directions given by the Division Bench of this Court vide judgment dated 31.07.2002 rendered in D.B. Civil Special Appeal Nos. 724/1998 and 746/1998, whereby the notification dated 28.03.93 issued by the State Government has been found invalid.

4. It is contended on behalf of the review-petitioners that the petitioners had no knowledge of the decisions passed by the Single Bench and Division Bench as they were not party to the writ petitions or special appeals. A writ petition bearing No. 827/1997 was filed by Shri Prem Nidhi Sharma, respondent No.2 in the review petition, wherein the resolution dated 02.01.1995 of the Board was challenged on the ground that since Govt. notification dated 28.08.93 on the basis of which resolution No. 168.48 dated 02.01.95 was adopted, has been found to be invalid by this Court vide judgments rendered in S.B. Civil Writ Petition No. 4100/1994 and D.B. Civil Special Appeal No. 985/1996, therefore, the resolution No. 168.48 dated 02.01.1995 is invalid and the promotions made on the post of Project Engineer (Senior) vide order dated 15.03.95 on the basis of this

resolution are also invalid.

5. Learned Single Judge of this Court vide judgment dated 20.07.98 partly allowed the writ petition mainly on the ground that the resolution No. 168.48 dated 02.01.1995 is invalid since it has the effect of amending the regulation without previous sanction of the State Government. Learned Single Judge has considered the regulations framed in the year 1976 called the Rajasthan Housing Board Employees conditions of Recruitment and Promotion Regulations, 1976. Under Regulation 7, it is provided that the ratio of direct recruitment and promotion of the employees in the service of the Board and qualifications and experience required for various posts will be in accordance with the 'Schedule' appended to the Regulations. Direct recruitment has been defined under Regulation 8. Regulation 10 provides that the first promotion to the Higher post shall be made on the basis of seniority-cum-merit and seniority list of each category of employees shall be prepared and maintained. As per the regulations the post of Project Engineer is to be filled up 50% by direct recruitment and 50% by promotion. There is again bifurcation in the promotion category to the effect that out of 50% posts meant for promotion, 30% posts are to

be filled from diploma holders and 20% from degree holders. The respondent No.2 Prem Nidhi Sharma (petitioner in the aforementioned writ petition) is diploma holder. The Government vide its order dated 28.08.93 decided that Junior Engineers be given one time promotion as Assistant Engineer against the direct recruitment quota for the reason that no recruitment could be made and the work was suffering.

6. Learned Single Judge having considered the judgment passed in S.B. Civil Writ Petition No. 4100/94 dated 16.04.96 and the judgment dated 24.02.94 passed in D.B. Civil Writ Petition No. 682/1993, has observed that resolution No. 168.48 is not sustainable in the eyes of law for the reason that it has nowhere been mentioned that the Regulation in regard to the promotions to be made to the ratio of 50% to Junior Engineers out of which 30% quota is allotted to diploma holders Junior Engineers and 20% to the degree holder Junior Engineers had been framed with the prior approval of the Government. Before amendment in the Regulations of 1976, prior approval has not been sought by the Rajasthan Housing Board, therefore, the resolution has no legal sanctity and is contrary to the provisions of Section 53 of the Housing Board Act itself and while partly

allowing the aforesaid writ petition, the learned Single Judge has observed as under:-

> "Though the resolution No. 168.48 has not been framed in accordance with the law. The appointments made in view of the resolution and against the regulations cannot be held invalid, but for the reason that the persons who are to be reverted had not been made party, I shall be hesitating to pass order of quashing the orders Annexures 4 and 5. However, it shall be appropriate that the respondent Housing Board shall issue notice to the persons promoted in violation of the regulations and after giving them proper opportunity, action be taken in accordance with law, within six months from the date of receipt of this order."

7. Aggrieved and dissatisfied with the aforesaid judgment dated 20.07.98 passed by the learned Single Judge, the Rajasthan Housing Board filed D.B. Special Appeal No. 724/1998 titled as Rajasthan Housing Board Vs. Prem Nidhi Sharma, and R.C. Burania and others filed D.B. Special Appeal No. 746/1998 titled as R.C. Burania & Ors. Vs. The Rajasthan Housing Board & Ors. These two special appeals were arising out of the same judgment dated 20.07.98 passed by the learned Single Judge in S.B. Civil Writ Petition No. 827/1997 and the same were dismissed by the Division Bench of this Court vide common judgment dated 31.07.2002. The Division Bench having considered the observations made by the learned

Single Judge has observed as under:-

> The direction so issued by the learned Single Judge is obvious that the directions are not at all in any manner affecting the rights of the appellants R.C. Burania & Ors. and no adverse order has been passed against them and if the appellants have any grievance they can raise it before the Housing Board pursuant to the notice to be given to them as the learned Single Judge has specifically directed the Housing Boards to issue notice to the persons who have been promoted in violation of the regulations and after giving them proper opportunity shall pass the order in accordance with the provisions of law."

8. Learned counsel appearing for the review-petitioners has challenged the judgments dated 20.07.98 and 31.07.2002 passed by the learned Single Judge and Division Bench of this Court respectively on the ground that the petitioners were not parties either in the writ petition or in the special appeals, therefore, they had no occasion to represent their case either before the learned Single Judge or before the Division Bench and as the petitioners were not made party in the writ petition or in special appeals, their rights are adversely affected and since the petitioners were likely to be affected, it was essential that they should have been impleaded as parties, as observed by the Hon'ble Supreme Court in the case of B. Ramanjini Vs. State of Andhra

Pradesh and others, reported in 2002(5) SCC 533, wherein in para No. 19 it has been held as under:-

> "19 Selection process had commended long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it. The writ petitions filed by the respondents concerned ought to have been dismissed which are more or less in the nature of a public interest litigation. It is not a case where those candidates who could not take part in the examination had challenged the same nor was any public interest, as such, really involved in this matter. It is only in the process of selection and standardisation of pass marks that some relaxation had been given which was under attack. Therefore, the High Court ought not to have examined the matter at the instance of the petitioners, particularly, in the absence of the parties before the Court whose substantial rights to hold office came to be virtually affected."

9. After referring the aforesaid judgment, learned counsel for the petitioners submits that the judgment passed by the Division Bench dated 31.07.2002 is in violation of principles of natural justice.

10. Further, learned Senior Counsel Mr. Bajrang Lal Sharma submits that the petitioners are holding the post of Project Engineer (Senior) since last 8 years and the order dated 15.03.95 vide which the petitioners were promoted on the post of Project Engineer (Senior) does not make a mention that the petitioners were promoted against the post of direct recruitment quota, therefore, on the basis of the order dated 31.07.2002, the notice dated 19.12.2002 stating that since the petitioners are promoted against the direct recruitment quota posts are being reverted deserves to be reviewed.

11. Further challenged the order passed by the learned Single Judge as well the Division Bench of this Court on the ground that the High Court could not have delegated its judicial functions to Rajasthan Housing Board for deciding/adjudicating the rights of the review petitioners and in support of his submissions, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin And Another, 2003(4) SCC 257,** wherein in para No. 14 the Hon'ble Supreme Court has observed as under:-

> “14. The judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function which can be

delegated or performance whereof may be secured through authorization.

"The judicial function consists in the interpretation of the law and its application by rule or discretion to the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the State sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature may be, which are performed by administrators; and administrators are all State officials who are neither legislators nor judges."

(See Constitutional and Administrative Law, Phillips and Jackson, 6th Edn., p.13) P. Ramanatha Aiyar's law Lexicon defines judicial function as the doing of something in the nature of or in the course of an action in court. (p.1015) The distinction between "judicial" and "ministerial acts" is:

If a Judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially. (pp. 1013-14)

Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, may be after making an enquiry, and the decision affects the rights and obligations of the parties. There is a duty to act judicially. The Judge may construe the law and apply it to a particular state of facts

> presented for the determination of the controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done. (Law Lexicon, ibid., p. 1234). In ministerial duty nothing is left to discretion; it is simple, definite duty. Presentation of election petition to the High Court within the meaning of Section 81 of the Act without anything more would mean delivery of election petition to the High Court through one of its officers competent or authorized to receive the same on behalf of and for the High Court. Receiving an election petition presented under Section 81 of the Act is certainly not a judicial function which needs to be performed by a Judge alone There is no discretion in receiving an election petition. An election petition, when presented, has to be received. It is a simple, definite duty. The date and time of presentation and the name of the person who presented (with such other particulars as may be prescribed) are to be endorsed truly and mechanically on the documents presented. It is a ministerial function simpliciter. It can safely be left to be performed by one of the administrative or ministerial staff of the High Court which is as much a part of the High Court. It may be delegated or be performed through someone authorized. The manner of authorization is not prescribed."

12. And the Division Bench of this Court in the case of **Jwala Prasad Vs. State of Rajasthan and others,**

AIR 1973 Rajasthan 187, in para No. 32 has observed as under:-

> "32. We may now deal with the next point, viz., that the impugned order is based on extraneous considerations inasmuch as the order is based on the notings made by the office of the Minister and thus the Minister has delegated his functions to his subordinates. It needs no argument to say that the question of supersession could be decided only by the Government or in other words by the Minister representing the Government and this function could not have been delegated by the Minister to his subordinates. Does it mean that the Minister was not entitled to take into consideration the notes prepared by his Office including that of the Deputy Secretary and the Home Commissioner? In this connection learned counsel for the petitioner has also argued that since the Home Commissioner was himself an official member of the Corporation the Minister should not have taken his opinion into consideration. He also likened the duty of the Minister in deciding the question of supersession to that of the judicial function of an ordinary court and submitted that the same procedure should have been followed."

13. Placing reliance on the aforesaid judgment, learned counsel appearing for the review petitioners submits that the learned Single Judge has seriously erred in giving power to the Housing Board to decide the representation and thus, judicial function of the High Court has been delegated to the Housing Board for

deciding/adjudicating the rights of the review petitioners.

14. The main contention of the learned counsel for the petitioners is that the review petitioners were necessary party in the writ petition and without impleading them as party, no adverse order can be passed. They were not parties in the writ petition and were not given opportunity of hearing also. In this regard, learned counsel for the petitioner has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Ranga Reddy And Others Vs. State of Andhra Pradesh And Others, 1987 (Supp) SCC 15,** wherein it has been held by the Hon'ble Supreme Court that the Tribunal erred in determining the question of seniority without joining the persons whose interests would be directly affected by such determination.

15. Further with regard to his contention that without impleading necessary party no adverse order can be passed, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Indu Shekhar Singh And Others Vs. State of U.P. And Others, (2006) 8 SCC 129,** wherein in para No. 56 the Hon'ble Supreme

Court has held as under:-

> "56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority. (See Prabodh Verma Vs. State of U.P., AIR 1985 SC 167) In Ram Janam Singh ([1994] 2 SCC 622) this Court held: (SCC p. 627, para 10)
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> "It is now almost settled that seniority of an officer in service is determined with reference to the date of his entry in the service which will be consistent with the requirement of Articles 14 and 16 of the Constitution. Of course, if the circumstances so require a group of persons can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority. But, whether such group of persons belong to a special class for any special treatment in matters of seniority has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Articles 14 and 16 of the Constitution. Normally, such classification should be by statutory rule or rules framed under Article 309 of the Constitution. The far-reaching implication of such rules need not be impressed because they purport to affect the seniority of persons who are already in service."

16. And also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **K.H. Siraj Vs. High Court of Kerala And Others, (2006) 6 SCC 395,** wherein in para No. 75 the Hon'ble Supreme

Court has observed as under:-

> “75. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellant-petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total rearrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded, namely 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That rule can be applied only when very large number of candidates are involved and it may not be able to pinpoint those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also.”

17. In the case of **Ram Janam Singh Vs. State of U.P. And Another, (1994) 2 SCC 622,** in para No.8, Hon'ble the Supreme Court has held as under:-

> “8. The appellant, admittedly, was not impleaded as a party to the said writ application, but as he is directly affected like many other officers, who had entered into the State Civil Service before

the respondent, filed the connected special leave petition challenging the validity of the judgment aforesaid. In view of the fact that the appellant had entered into Civil Service of the State Government before the respondent, it is not in dispute that he is affected in the manner of seniority by the impugned judgment. It was held by this Court in the case of *Prabodh Verma Vs. State of U.P. (AIR 1985 SC 167)* that a writ application in which the necessary parties likely to be affected have not been impleaded, the High Court should not proceed with such writ application without insisting on such persons or some of them in representative capacity being made respondents. It was further held that if petitioner refuses to join them, the High Court ought to dismiss the petition for non-rejoinder or necessary parties. Admittedly, none was impleaded even in representative capacity. But it can be urged on behalf of the respondent that he had not sought any relief against any individual. He had sought the intervention of the High Court to declare Rule 3(1) of 1973 Rules and Rule 3(b) of 1980 Rules as ultra vires so far they made applicable the benefit of those rules to only specified class of persons and restricted to others who were similarly situated. As such respondent was not required to implead private respondent, (sic appellant), who might be affected by the verdict of the Court. Even if this stand is accepted, can it be said that persons who have been affected by the judgment of the High Court in the connection writ application cannot challenge the correctness thereof either by filing a review petition before the High Court or by filing a special leave

> petition before this Court? According to us, the answer is in negative. T he appellant has a locus standi to challenge the said judgment although he was not a party to the same and the special leave petition filed on his behalf cannot be rejected on that ground. The delay in filing the special leave petition has also been fully explained in the facts and circumstances of the case, which is condoned."

18. Per contra, learned counsel Mr. G.K. Garg, appearing for the respondents has submitted that the learned Single Judge while deciding the case came to the conclusion that the Resolution No. 168.48 dated 02.01.95 deserves to be quashed on two grounds namely:-

(i) It is against the provisions of Section 53 of the Rajasthan Housing Board Act which inter-alia provides that the Regulations could be made after taking approval from the State Government which in the instant case has not been taken and the service conditions/regulations could not have been changed by passing the resolution; and

(ii) That the resolution was passed on the basis of the notification dated 28.08.93 issued by the State Government and same has already been quashed by this Court in Civil Writ Petition No. 4100/1994 and connected writ petition vide judgment dated 16.04.1996 and upheld in the Special Appeal No. 985/1996 and

S.B.C.W. Petition No. 1500/1997 vide judgment dated 01.04.98 and in the Special Leave Petition by the Hon'ble Supreme Court on 04.05.98.

19. The learned Single Judge at page 9 of the judgment, when a question came up as to how the Annexures 4 and 5 by which inter-alia promotions had been given to 28 degree holders and 7 diploma holders on adhoc basis for a period of one year and extended by further period of one year respectively would be quashed in absence of the adhoc promotees for the reasons that perhaps all the persons may not be governed by the Resolution No. 168.48, directed to issue notices to them.

20. Further the learned Single Judge thought it proper not to quash Annexures 4 and 5 and it was left open to the Rajasthan Housing Board to give show cause notice and after giving opportunity of being heard, the same may be decided. The review petitioners have misconstrued the judgment as if show cause notice had to be given for the purposes of redetermination of the legality of Resolution No. 168.48. So far as quashing of Resolution No. 168.48 is concerned, no show cause notice had to be given, rather it was not required being a

promotion matter and the basis of which namely the Notification dated 28.08.93 issued by the State Government had already been quashed by the Hon'ble Apex Court. Thus, the notices were directed to be issued by the Housing Board only with a view that the case of promotion which is not covered by the Resolution No. 168.48 may not be affected.

21. It is further contended on behalf of the respondents that after show cause notice issued to the petitioners by the Rajasthan Housing Board, the petitioners have preferred a writ petition against it, which was registered as S.B.C.W. Petition No. 365/2003 wherein stay has been granted in their favour and the writ petition is still pending. It is wrong to say that any judicial power had been delegated by this Court to the Rajasthan Housing Board. Such an argument on behalf of the review petitioners is raised with a view to mislead this Court and to protect their illegal promotions.

22. In reply to the submissions made on behalf of the review petitioners that without impleading the review petitioners as party respondents, order cannot be passed prejudicial to their rights, learned counsel for

the respondents Mr. Garg has contended that the petitioners were well represented by similarly situated three persons namely, R.C. Burania, V.D. Shukla and M.P.S. Juneja, who had filed a special appeal against the judgment of the learned Single Judge and the same also came to be decided by the Division Bench of this Court vide judgment dated 31.07.2002 which sought to be reviewed.

23. It is further submitted by Mr. Garg that in the matter of policy decision, there is no need to implead an individual for the purpose of adjudication and decision of the writ petition. This principle has been laid down by the Hon'ble Apex Court and this Court in number of cases. It has been held by the Hon'ble Supreme Court that misdemeanor of individual being not in question they are not necessary parties and reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the case of (1) **Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, AIR 1990 SC 2023,** (2) **Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and others, AIR 1996 SC 2552**, and (3) **Punjab State Electricity Board And Another Vs. Baldev Singh, 1998(5) SCC 450** and this Court

in the case of **Miss Kamlesh Bhadwaj etc. etc. Vs. State of Raj. & anr., 1982 RLR 638.**

24. It is again reiterated by the respondents that the petitioners have already filed a writ petition before this Court registered against the show cause notice and thus, they have availed the opportunity of redressing their grievance against the notice issued pursuant to the directions given by the learned Single Judge vide his judgment dated 20.07.98. The petitioners were also well aware of the fact that the writ petition and special appeals are pending as their General Secretary Shri Burania has filed special appeal and rehearing of the case is not maintainable under the garb of the review petition, as decided by the Hon'ble Supreme Court in the case of **Lily Thomas And Others Vs. Union of India And Others, 2000(6) SCC 224** and in the case of **State of Haryana & Ors. Vs. Mohinder Singh & Ors., 2003(1) WLC (SC) Civil 499.**

25. Thus, the review petitioners are not necessary parties inasmuch as they were promoted as Project Engineer (Senior) on adhoc basis and there is no substantive right accrued in their favour.

26. With regard to the arguments advanced on behalf of the review petitioners that giving of notice is a futile exercise for the reason that this Court has already decided the validity of the Resolution No. 168.48, it is contended on behalf of the respondents that so far as the resolution is concerned, the same was rightly quashed by this Court and no opportunity for adjudication of validity had to be given. The show cause notices were only directed to be given with a view that they are not to be demoted if they are not covered by the Resolution No. 168.48 and that too after giving opportunity of being heard. It is strongly contended that the scope of review is very limited and no case of review is made out. There is no error or mistake as may have been covered by the provisions of Order 47 Rule 1 CPC and in this regard Mr. Garg placed reliance on the judgments rendered by the Hon'ble Supreme Court in the case of **Lily Thomas etc. etc. Vs. Union of India and others, AIR 2000 SC 1650** [2000(6) SCC 224], **Surendra Kumar Vakil and others Vs. Chief Executive Officer, M.P. And others, AIR 2004 SC 3088** and in the case of **State of Haryana & Ors. Vs. Mohinder Singh & Ors. (supra).**

27. Heard rival submissions of the respective

parties and have also gone through the impugned judgments dated 20.07.98 and 31.07.2002 and carefully perused the relevant provisions of law as well as the judgments referred by the respective parties.

28. The learned Single Judge while partly allowing the writ petition No. 827/1997 vide judgment dated 20.07.98, has observed that the appointments made in view of the resolution and against the regulations cannot be held invalid, but for the reason that the persons who are to be reverted had not been made party, therefore, without quashing Annexures 4 and 5, the learned Single Judge thought it appropriate that the respondent Housing Board shall issue notice to the persons promoted in violation of the regulations and after giving them proper opportunity, action be taken in accordance with law.

29. The review petitioners have tried to make out a case that this direction is nothing but delegating its functions to the Rajasthan Housing Board for deciding the rights of the review petitioners.

30. Upon careful perusal of the judgment rendered in the case of **Jamal Uddin Ahmad (supra),** wherein the

Hon'ble Supreme Court has observed that the judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function which can be delegated or performance whereof may be secured through authorization.

31. Similarly the Division Bench of this Court in the case of **Jwala Prasad (supra),** while dealing with Section 38 of the Road Transport Act, 1950, has held that Section 38 of the Act pertains to the exercise of judicial function of an ordinary Court. It really pertains to administration and the function of a Minister in the matter of deciding the question of supersession is administrative and not in the ordinary sense judicial.

32. Hon'ble the Apex Court in the case of **Jamal Uddin Ahmad (supra),** has observed that if a Judge dealing with a particular matter has to exercise his discretion in arriving at a decision.

33. Here in the instant case, the learned Single Judge has exercised its discretion and arrived at a conclusion that the persons who are to be reverted and had not been made party, the respondent Housing Board

shall issue notice to the persons promoted in violation of the regulations and after giving them proper opportunity, action be taken in accordance with law. These directions cannot said to be delegation of judicial function. The learned Single Judge only entrusted the function to the Housing Board that after giving opportunity of being heard and after examining the case of individual whether their promotions are in accordance with the regulations or not, shall pass necessary order to this effect. In view of the judgment passed by the learned Single Judge, the ratio decided in the judgments referred by the learned counsel for the review petitioners is not applicable to the facts and circumstances of the present case.

34. With regard to the fact that review petitioners were not party before the learned Single Judge in the writ petition as well as in the special appeals, it has been held by the Hon'ble Supreme Court in the case of **Indu Shekhar Singh (supra)** that the appellants herein were not joined as parties in the writ petition filed by the respondents and in their absence, the High Court could not have determined the question of inter se seniority.

35. Here in the present case, the learned Single Judge has held that the resolution under which promotions were made is contrary to the regulation, therefore, without quashing and setting aside the promotion orders, the learned Single Judge directed the Housing Board to issue notice to the persons promoted in violation of the regulations and after providing them opportunity of being heard, action be taken in accordance with law.

36. It is admitted that the review petitioners were not party in the writ petition but the decision of the learned Single Judge has not adversely affected the rights of the review petitioners as opportunity of being heard is already provided to them and they have already availed the same and against the show cause notice, the review petitioners have already preferred a writ petition which is still pending and in such circumstances, non-joinder of the parties cannot said to be fatal.

37. As per the settled preposition of law laid down by the Hon'ble Supreme Court in the case of **Lily Thomas etc. etc. Vs. Union of India and others, (supra),** wherein the word 'Review' is incorporated by the Hon'ble

Supreme Court. The dictionary meaning of the word 'review' is 'the act of looking', offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statue. The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statue dealing with the exercise of power. Mistake apparent on face of record- Cannot mean error which has to be fished out and searched- Words “any other sufficient reason”- Mean “a reason sufficient on grounds at least analogous to those specified in the rule”.

38. Similar view has been taken in the judgment rendered by the Hon'ble Apex Court in the case of **State of Haryana & Ors. Vs. Mohinder Singh & Ors. (supra),** wherein the Apex Court has observed that the division bench in the High Court, in our view, completely overstepped the limits of its jurisdiction and on the face of it appears to have proceeded as though it is a rehearing of the whole petition which had been earlier finally disposed of. It has often been reiterated that the scope available for a litigant invoking the powers of review is not one more chance for rehearing of the matter already finally disposed of. The course adopted

in this case by the High Court appears to be really what has been held by this Court to be not permissible.

39. It is not disputed that the review petitioners have already preferred a writ petition before this Court against the show cause notice issued by the Rajasthan Housing Board pursuant to the directions given by this Court vide judgment dated 20.07.98 rendered in S.B.C.W. Petition No. 827/1997, which has been registered as S.B.C.W. Petition No. 365/2003 and the same is still pending. Even otherwise on merits also, as observed herein above, we find no substance in these review petitions.

40. Consequently, both the review petitions fail being devoid of merit and the same are hereby dismissed with no order as to costs.

(VINEET KOTHARI),J. **(K.S. RATHORE),J.**

/KKC/